IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

NOTICE OF MOTION NO.3059 OF 2005
IN
SUM. SUIT NO.2769 OF 2005

Vikasco Rubber Products (India)
and ors. Plaintiffs

vs.

Sun Pharmaceutical Industrries Ltd. Defendants

Mr.Virag Tulzapurkar i/b.Rajesh G. Singh for the plaintiffs.

Mr.M.P.S.Rao with Mr.S. Udeshi for the defendants.

CORAM : S.U. KAMDAR,J.

DATED : 24th October 2005

P.C.

By consent, the notice of motion is made returnable forthwith.

2. The present suit is filed for redemption of mortgage. The claim in the present suit is in respect of the loan amount lent and advanced and the balance due and payable by the plaintiffs to the defendants. The principal amount lent was Rs.1,70,00,000/-. The plaintiffs were also liable to pay interest thereon. It is the case of the defendants that as on date the amount due and payable by the plaintiffs to the defendants is Rs.8,92,47,692/-. The said amount, as per the worksheet handed over by the defendants comprise of principal amount of Rs.1,81,41,249/- and interest thereon of Rs.3,35,56,340/- i.e. at the rate of 21% p.a. He has

further claim of Rs.3,83,50,103/- towards penal interest being a penal rate of interest at the rate of 24% p.a. After giving credit to the sum of Rs.8 lacs received, the balance claim raised by the defendants is Rs.8,92,47,692/-. As against that the plaintiffs contention is that total due and payable in respect of the said mortgage is Rs.4,73,05,334/-. It is the case of the plaintiffs that they are not required to make payment of any penal interest as claimed at the rate of 24% p.a. under the contract. However, the learned counsel appearing for the plaintiffs contends that the plaintiffs are not required to pay the entire amount but without prejudice to their contention they are depositing in this Court a sum of Rs.8 crores with further undertaking that they will undertake to pay the further decretal amount, if any, as may be found due and payable in the Suit. On such deposit being made, it is necessary that the title documents which are lying with the defendants ought to have been released. The learned counsel for the defendants contends that they will not release the title documents unless entire amount is paid. In my opinion, the claim of the defendants having been fully secured by way of deposit of the amount. The following order is required to the passed in the interest of justice. If the aforesaid amount is deposited in the present Suit by the plaintiffs then the Prothonotary & Senior Master, High Court is directed to invest the same in a fixed deposit of any nationalised

bank for a period of three years and renew the same further with accrued interest thereon from time to time till further orders. I also appoint the Court Receiver, High Court, Bombay as Receiver with a direction to take possession from the defendants the said original title documents which are as mentioned in Exhibit B to the plaint. In any event, if the said documents are handed over by the plaintiffs, the defendants will be at liberty to withdraw out of the deposit, a sum of Rs.4,73,05,334/- without prejudice to their rights and contentions to claim the balance amount as computed by them. The Court Receiver, High Court, to take possession of the said documents and hand over the same to the plaintiff only after the deposit of entire sum of Rs.8 crores in this Court. There shall be no order as to costs.

3. Mr.Rao, the learned counsel for the defendants states that he is not in possession of the duplicate copy of the share certificate, but is in possession of only zerox copy thereof. That issue is kept open to be determined in the Suit.

4. The learned counsel for the defendants seeks stay of this order. Stay is granted for a period of four weeks from today.

5. The learned counsel for the defendants, however,

undertakes to this Court that the documents will not be parted with till and until the same is handed over to the Court Receiver.

6. Notice of motion is disposed of accordingly.

(S.U. KAMDAR,J.)